

MBS International Airport  
DBE PROGRAM  
In Compliance with 49CFR PART 26

Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR 26.5 (attached).

Objectives /Policy Statement (26.1, 26.23)

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy -

- 1 To ensure nondiscrimination in the award and administration of DOT assisted contracts;
- 2 To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
- 3 To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- 4 To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- 5 To help remove barriers to the participation of DBEs in DOT assisted contracts; and
- 6 To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The airport manager has been delegated as the DBE Liaison Officer. In that capacity, the airport manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County in its financial assistance agreements with the Department of Transportation.

The DBE Liaison Officer shall have direct, independent access to the chairman of the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County.

The DBE Liaison Officer's name and address is: Elizabeth E. Owen, MBS International Airport , 8500 Garfield Rd., P.O. Box P, Freeland, Michigan 48623

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County has disseminated this policy statement to the officials of the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County and all the components of our organization.

We have made this statement available to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts through ads in the Michigan Contractor and Builder magazine, Michigan Road Builder magazine, and local newspaper.

The complete program document is available through the Michigan Department of Transportation (MDOT), Bureau of Aeronautics internet website [mdot.state.mi.us/aero/](http://mdot.state.mi.us/aero/)

MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County

Date

Nondiscrimination. (26.7)

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the MBS International Airport will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

DBE Program Updates (26.21)

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Quotas (26.43)

We do not use quotas in any way in the administration of this DBE program.

DBE Liaison Officer (DBELO) (26.25)

We have designated the following individual as our DBE Liaison Officer: Elizabeth E. Owen, 8500 Garfield Rd., P.O. Box P, Freeland, Michigan 48623, 517/695-5555. In that capacity, the airport manager is responsible for implementing all aspects of the DBE program and ensuring that the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County comply with all provisions of 49 CFR Part 26.

The DBELO has direct, independent access to the officials of the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County concerning DBE program matters. The airport

manager may be assisted by the MDOT for DBE program matters.

The main available resource is the Michigan Department of Transportation which has the Bureau of Aeronautics (one full time professional), and the Office of Equal Opportunity (nineteen full time staff, professionals, para-professionals, and support). This resource certifies DBEs and provides the directory, assists in calculating goals, monitors payments to contractors, and summarizes accomplishments

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate officials. Duties and responsibilities include the following :

- 1 Gathers and reports statistical data and other information as required by DOT.
- 2 Reviews third party contracts and purchase requisitions for compliance with this program.
- 3 Works with all departments to set overall annual goals.
- 4 Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- 5 Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- 6 Analyzes the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County's progress toward goal attainment and identifies ways to improve progress.
- 7 Participates in pre-bid meetings.
- 8 Reviews MDOT legal counsel and project management to determine contractor compliance with good faith efforts.
- 9 Provides, through MDOT, DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- 10 Plans, through MDOT, and may participate in DBE training seminars.
- 11 Certifies DBEs, through MDOT, according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Michigan.
- 12 Provides outreach, through MDOT, to DBEs and community organizations to advise them of opportunities.
- 13 Utilizes an updated directory of certified DBEs maintained by MDOT

Federal Financial Assistance Agreement Assurance (26.13)

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County have signed the following assurance, applicable to all DOT-assisted contracts and their administration:

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County shall

not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26.

The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT,

is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County

of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S. C. 3801 et seq.).

#### DBE Financial Institutions (26.27)

It is the policy of the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County to investigate the services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. To date we have identified the following such institutions: See Attachment A.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer. To date we have surveyed local financial institutions, and have identified the following such DBE-owned institutions: See Attachment A.

#### Directory (26.31)

The MDOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. They revise the Directory annually. They make the directory available as follows: MDOT, 425 W Ottawa St., Lansing. MI 48933, Ph No. 517-241-4427.

The DBE directory is attached, and we will make it available to any interested person (49 CFR Part 26.31). Copies can be obtained from the above named DBE Liaison Officer. Also, copies can be downloaded from the MDOT website, - <http://www.mdot.state.mi.us/index.htm> - then click "MDOT BBS File Libraries", then "File Libraries", then use the guest user name and password, then click on "BIDS", then scroll down to "DBE.TXT" and click on it. Follow the instructions for downloading.

All bidders will be provided a copy, and all certified DBEs in the directory will receive copies annually.

#### Overconcentration (26.33)

No over concentration has been identified in any work category.

#### Business Development Programs (26.35)

No business development program or mentor protege program is being considered at this time.

#### Required Contract Clauses (26.13, 26.29)

##### Contract Assurance

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

##### Prompt Payment

We will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten days from the receipt of each payment the prime contractor receives from MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County ,or its agent, MDOT. The prime contractor agrees further to return retainage payments to each subcontractor within ten days after the subcontractor's work is satisfactorily completed.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County. This clause applies to both DBE and non-DBE subcontractors.

#### Monitoring and Enforcement Mechanisms (26.37)

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps provided in 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

All construction contracts are administered through the Michigan Department of Transportation (MDOT). MDOT conducts field monitoring of prime contractors to assure that DBE certified firms working on contracts perform a commercial useful function, and that the designated DBE is doing the work. MDOT also accumulates, records and counts all DBE participation in the eligible project. Counting will be done in accordance with 26.55.

The sponsor will utilize all federal, state and local laws, regulations, and contractual remedies available to enforce contract compliance. Some of these laws are listed here:

--- Federal DOT regulation 49 Part 18, covering Breach of Contract Terms Sanctions, Inspection of Records, and Termination of Contract is part of the federal provisions that are included in all contracts involving federal funds.

--- Conduct of Certification or Removal of Eligibility - The State of Michigan, Administrative Law Judge will conduct a hearing in accordance with the requirements of 49 CFR, Parts 23 and 26, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs; Final Rule", currently found at 64 Federal Register 5096 (2-2-99); 1964 PA 286, MCL 247.801-816; MSA 9.216(1); and the Michigan Rules of Evidence along with pertinent Michigan and federal case law.

--- Certified Payrolls & Minimum Wages - Davis Bacon Requirement, 29 CFR Part 5

--- Termination of Contract - 49 CFR Part 18

--- Contract Work Hours and Safety Standards Act Requirements - 29 CFR Part 5

--- Contract Requirements - MDOT, Bureau of Aeronautics, "General Provisions for the Construction of Airports" includes provisions for Subletting of Contract, Limitation of Operations, Schedule of Liquidated Damages, Termination for National Emergencies or Other Unforeseen Conditions, etc.

Overall Goals (26.45)

Amount of goal

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County overall goal for the following time period (2000 -2004) is the following: 9.3% of the Federal financial assistance we will expend in DOT-assisted contracts.

Given the amount of DOT-assisted contracts MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County expects to let during this fiscal year/project, which is \$4,236,705, this means that we have set a goal of expending \$ 394,014 with DBEs during this fiscal year/project.

#### Method

The following is a summary of the method we used to calculate this goal:

The method used to calculate the relative availability of DBEs ('base figure') for 'Step 1' of the process (see 26.45(c)) is as follows. The base figure is a percentage figure calculated by dividing a number representing available DBEs (25) by a number representing all available firms (332).

The data sources used to derive the numerator and denominator in the calculation: there were 25 DBEs in our Directory and 332 total firms in the following SIC codes and following Counties found in the Census Bureau's CBP database.

Counties: Arenac, Bay, Genesee, Gladwin, Huron, Lapeer, Midland, Saginaw, Sanilac, Shiawassee, Tuscola

Work will include heavy construction (1600) and professional engineering services (8711).

SIC	Directory	CBP	
1600	24	159	
8711	1	173	
All	25	332	Base figure= 7.5%

Adjustment of base figure.

Past accomplishments over the last ten years have been an average of 11.0%, so the base figure has been adjusted by averaging the past performance with the base figure.

The overall goal is: 9.3%

#### Process

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County submits its overall goal to DOT on August 1 of each year.

Before establishing the overall goal each year, the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County will consult with its agent, MDOT, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County efforts to establish a level playing field for the participation of DBEs.

The MDOT, on behalf of the airport, consults with its statewide DBE Advisory Committee that is comprised of minority and women business owners, as well as non-DBE business owners. This group meets quarterly and the resulting comments will be documented and distributed.

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection at the MDOT internet website for 30 days following the date of the notice, and the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County and DOT will accept comments on the goals for 45 days from the date of the notice. Notices will appear in the periodicals listed in Attachment B.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT.

#### Breakout of Estimated Race-Neutral and Race-Conscious Participation

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County uses the following race-neutral means to increase DBE participation:

We estimate that, in meeting our overall goal of 9.3 %, we will obtain 0.1% from race-neutral participation and 9.2% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation: Our race neutral goal is based on a preliminary study of accomplishments in the past year of airport projects statewide that awarded contracts to DBEs as prime contractors ,and subcontracts awarded to DBEs where no goal was set .

This was done manually by MDOT, OEO staff due to the limited time needed to develop the new program and the fairly extensive database query that needs to be setup. The query is being setup for next years' program.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;

DBE participation on a subcontract to a prime contract that had no DBE requirement or 0% goal.

The state level information regarding disparity studies and other pertinent barriers is focused at the Michigan Department of Transportation (MDOT). MDOT conducted a statewide disparity study at the beginning of its DBE program in the early eighties. Since then MDOT has been the only department at the state level to certify DBEs for federal qualification of grants. The above data has been accumulated by the MDOT.

There are no disparity studies available within the jurisdiction of the airport. Further, we are not aware of any evidence pertaining to barriers affecting opportunities for DBEs to form, grow, and compete.

Organizations in the Freeland area and statewide were contacted and had no usable input to offer regarding the program or the goal. These organizations included the Small Business Administration. Since the construction contracts and the professional services contracts are not bid locally, but on a statewide basis, the MBS International Airport will extend its search for input on a statewide basis, utilizing the resources of MDOT.

The MDOT, on behalf of the airport, consults with its statewide DBE Advisory Committee that is comprised of minority and women contractors, business owners and organizations, as well as non-DBE contractors and business owners. These discussions include the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts to establish a level playing field.

Contacts requesting review and comments were made regarding programs and goals with the organizations on Attachment E. This list consists of DBE and non-DBE consultant and contractors as well as contractor organizations.

Consultations with the above mentioned DBE organizations will be held within sixty days to review the 2001 program and the status of the 2000 program.

Public notice of the plan and goal in newspapers, trade magazines, and internet has resulted in no comments being received. Please see attachment B for a list of periodicals.

Race-neutral measures that are part of this program include, through the utilization of the MDOT, Office of Equal Opportunity, include:

- (1) Providing technical assistance and other services through MDOT's DBE semi-annual



workshops;

(2) Ensuring the inclusion of DBEs and other small business, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; and provision of information in languages other than English, where appropriate;

(3) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability;

(4) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(5) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(6) Ensuring distribution of the DBE directory, through print, to all interested contractors statewide and in other states;

#### Contract Goals (26.51)

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County will use contract goals to meet any portion of the overall goal the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County cannot meet using race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work)

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract. The recipient does not intend to use any race-conscious means of obtaining DBE participation other than contract goals.

Contract goals are established so that, over the period to which the goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through race-neutral means.

#### Good Faith Efforts (26.53)

Information to be submitted

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County treats bidder/offers' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information in accordance with MDOT deadlines.

1 The names and addresses of DBE firms that will participate in the contract;

2 A description of the work that each DBE will perform:

- 3 The dollar amount of the participation of each DBE firm participation
- 4 Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- 5 Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- 6 If the contract goal is not met, evidence of good faith efforts.

The information must be presented under sealed bid procedures, as a matter of responsiveness, or with initial proposals under contract negotiation procedures.

#### Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: The MDOT , Bureau of Aeronautics, DBE Waiver Committee - Airports Division Administrator, Project Section Manager, DBE Liaison.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

#### Administrative reconsideration

Within ten days of being informed by the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: MDOT, Bureau of Aeronautics, Deputy Director, 2700 E Airport Service Rd Lansing, MI 48906.

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

## Good Faith Efforts when a DBE is replaced on a contract

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

## Counting DBE Participation (26.55)

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

## Certification (26.61 - 26.91)

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26; these procedures will be implemented by the Michigan Department of Transportation. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

A separate agreement between the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, and Bay County, and the Michigan Department of Transportation will be executed for each federal project grant. Each agreement will have an appendix C that references 49 CFR Part 26 as part of the contract and the steps to be taken if there are any violations. Appendix C is attached.

Certification of DBEs, including appeals, recertification, "no change" affidavits and notices of change, and personal net worth requirements are also covered by this agreement.

## Process

For information about the certification process or to apply for certification, firms should contact: Mr. Charles E. Ford, Michigan Department of Transportation, Office of Equal Opportunity, 425 West Ottawa St., Lansing, MI 48933.

To remove a DBE's certification, MDOT decertification procedures will be followed. For a copy of MDOT's procedural manual contact Mr. Ford at the above address.

## Unified Certification Program

Our contribution to this effort is to utilize the MDOT certification program, which is recognized as the only process in Michigan that meets Federal DBE requirements.

We rely on the MDOT for all certification issues. At this point, MDOT is working with US DOT to

establish how many governmental agencies would be involved in Michigan. It appears that MDOT will be the lead agency for this effort. We will support and comply with the MDOT's efforts to organize this requirement, or with whatever agency does succeed.

#### Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation Office of Civil Rights Certification Appeals Branch 400 7th St., SW,  
Room 2104 Washington, DC 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

#### Recertifications

We will review the eligibility of DBEs that we certified under former Part 23, to make sure that they meet the standards of Subpart D of part 26. we will complete this review no later than three years from the most recent certification date of each firm.

The schedule for recertification will be on the anniversary date of each firms certification. MDOT previously required recertification review every two years, so as each firms anniversary date is encountered, it will be notified of the recertification action.

We, again, will utilize for recertifications, the MDOT certification process which has been updated to Part 26 requirements.

#### "No Change" Affidavits and Notices of Change

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with [name of DBE]'s application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

"I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about

which you have provided written notice to the Michigan Department of Transportation under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBE rules) over the firm's previous three fiscal years do not exceed \$16.6 million."

We require DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

We will notify all currently certified DBE firms of these obligations by letter thirty days prior to the anniversary date. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth.

Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

We, again, will utilize for this requirement, the MDOT certification process which has been updated to Part 26 requirements.

#### Personal Net Worth

We will require all disadvantaged owners of applicants and of currently certified DBEs whose eligibility under part 26 we review, to submit a statement of personal net worth. The statement of personal net worth should be submitted at the time of, and included with the certification application.

A sample form is attached.

We, again, will utilize for this requirement, the MDOT certification process which has been updated to Part 26 requirements.

#### Denials of Initial Requests for Certifications

When a firm is denied certification, MDOT will establish a time period of no more than twelve months that must elapse before a firm may reapply to MDOT for certification.

#### Removal of a DBE's Eligibility

The MDOT acts on behalf of the airport for all certification issues. The MDOT procedure for this attached below. The designated person is the MDOT, DBELO who will make the decision. If appealed, the case would be heard by a state administrative law judge.

#### Information Collection and Reporting

##### Bidders List

The MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County, through its agent the Michigan Department of Transportation, will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

MDOT will collect this information using its process.

#### Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the MBS Airport Commission on behalf of the Cities of Midland & Saginaw, Bay County, the MDOT, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We, through the MDOT, will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

We through MDOT, will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

#### Reporting to DOT

We will report DBE participation to DOT as follows:

We will submit annually DOT Form 4630, as modified for use by FAA recipients.

#### Confidentiality

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law . Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

The Michigan Freedom of Information Act (Act 442 of 1976, amended by 1996 PA 553) provides that all records held by a public agency are subject to disclosure except those specifically cited as exempted. Specifically exempt are "--Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing government policy."

Also specifically exempt: "- Specific personal information about an individual if the release would constitute a clearly unwarranted invasion of that individual's privacy."

The above FOIA law covers all "public bodies in the state" and includes a complete list of state and local agencies. No other state or local laws are known to cover confidentiality.

#### Attachments

Attachment A - List of Local DBE Financial Institutions

Attachment B - List of advertisement periodicals

(For copies of 49 CFR Part 26, and 49 CFR Part 26, Correction dated 6/28,99 download from the internet website, <http://osdbuweb.dot.gov/programs/dbe/dbe.htm> -too lengthy to print here)

Attachment C - Appendix C of the sponsor/state agreement

Attachment D - Deleted

Attachment E - List of Contact Organizations

Attachment - Memo of Understanding

Personal Net Worth form - (MDOT) Two pages

Removal of Eligibility Procedure, Removal of Eligibility - Two pages (MDOT procedure)

MDOT DBE Directory (not attached to internet website, but available through MDOT, at 517-335-4268)